

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY)	MDL No. 1456
AVERAGE WHOLESALE PRICE)	
LITIGATION)	CIVIL ACTION: 01-CV-12257-PBS
)	
THIS DOCUMENT RELATES TO:)	
)	Judge Patti B. Saris
ALL ACTIONS)	
)	Chief Magistrate Judge Marianne B. Bowler
)	
)	

**B. BRAUN MEDICAL INC.'S MOTION FOR A PROTECTIVE ORDER
STAYING DISCOVERY PENDING RESOLUTION OF ITS MOTION TO DISMISS**

B. Braun Medical Inc. ("BBM") respectfully moves this Court to issue a protective order staying discovery pending resolution of BBM's motion to dismiss the plaintiffs' claims against it. BBM was named as a defendant in the plaintiffs' recently-filed Second Amended Master Consolidated Class Action Complaint ("SAMCC") and has filed a motion to dismiss on the grounds that the Court lacks subject matter jurisdiction over the plaintiffs' claims against BBM.

BBM's motion to dismiss is ripe for decision and should dispose of all claims against it. Indeed, the plaintiffs have conceded that two of their four claims against BBM are defective and should be dismissed. (*See* Pls.' Opp. Mem. at 1 & n. 1.) Moreover, because the plaintiffs' discovery demands are irrelevant to the issues raised by BBM's motion to dismiss, the demands are premature and unwarranted. Further, responding to plaintiffs' discovery demands pending

the resolution of BBM's motion would impose an undue burden on the time and resources of BBM.

Therefore, for the reasons stated in the accompanying memorandum, B. Braun Medical Inc. respectfully requests that the Court issue a protective order staying discovery against B. Braun Medical Inc. pending resolution of BBM's pending motion to dismiss the Second Amended Master Consolidated Class Action Complaint.

Dated: May 23, 2005

Respectfully submitted,

/s/ Daniel F. Attridge, P.C.

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(a)(2)

Pursuant to Local Rule 7.1(a)(2), I hereby certify that counsel for B. Braun Medical Inc. has conferred with counsel for plaintiffs and that plaintiffs do not assent to this motion.

/s/ Daniel F. Attridge, P.C.

Daniel F. Attridge, P.C.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing B. BRAUN MEDICAL INC.'S MOTION FOR A PROTECTIVE ORDER STAYING DISCOVERY PENDING RESOLUTION OF ITS MOTION TO DISMISS and PROPOSED ORDER have been served on all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to Verilaw Technologies for posting and notification to all parties on this 23rd day of May, 2005.

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